IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

WEDNESDAY, THE 3RD JANUARY 2007 / 13TH POUSHA 1928

WP(C).No. 29418 of 2006(B)

PETITIONER:

RAJAGOPALAN, AGED 35 YEARS,
S/O.KUTTY UNNYATHI, CHALIL HOUSE,
KADAYIRAPPU, IKKARANADU NORTH VILLAGE,
KUNNATHUNDADU TALUK, ERNAKULAM DIST.

BY ADV. SRI.M.V.JOY

RESPONDENTS:

REMAKRISHNAN, AGED 43 YEARS,
S/O.KUTTY UNNYATHI, CHALIL HOUSE,
KADAYIRAPPU, IKKARANADU NORTH VILLAGE,
KUNNATHUNADU TALUK, ERNAKULAM DIST.

BY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03/01/2007, ALONG WITH WP(C) NO.31289/2006 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.29418/2006

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE PLAINT IN OS.13/06 DT.23.2.06 ON THE FILE OF THE MUNSIFF'S COURT , KOLENCHERY.

EXT.P2:- COPY OF THE WRITTEN STATEMENT IN OS. NO.13/06 DT.7.4.06.

EXT.P3:- COPY OF THE PETITION .

EXT.P4:- COPY OF THE IA.284/2006 DT.4.11.2006 FOR REMOVAL OF THE CASE FROM SPECIAL LIST

EXT.P5:- COPY OF THE ORDER IN IA. 284/06.

EXT.P6:- COPY OF THE IN IOA.285/06.

EXT.P7:- COPY OF THE PETITION DT.1.11.06 BEFORE THE MUNSIFF'S COURT, KOLENCHERY IN OS.13/06.

EXT.P8:- COPY OF THE VERBATION ORDER DT.13.11.06 BEFORE THE MUNSIFF'S COURT KOLENCHERY IN OS.7/2006.

/TRUE COPY/

tss

M.SASIDHARAN NAMBIAR, J.

W.P.C.NO.29418 OF 2006 (B)
and
W.P.C.NO.31289 OF 2006 (Y)

Dated this the 3 th day of January, 2007.

J U D G M E N T

O.S.13/06 and 7/06 were jointly tried by Munsiff Court, Kolenchery. O.S.13/06 is a suit for fixation of boundary of plaint C schedule property. In that suit, petitioner/plaintiff filed I.A.284/06, an application to remove the suit from special list and I.A.285/06, an application for appointment of a commission to prepare a plan with the assistance of surveyor. Under Ext.P6 order, learned Munsiff dismissed the application holding that the petition is highly belated and is without bona fides. Challenging that order petitioner filed W.P.(C).29418/06. As per order dated 8.11.06, this court granted an order of stay of further proceedings in O.S.13/06. When the order was received by learned Munsiff, as per Ext.P7 order, learned Munsiff held that O.S.7/06 is to be proceeded separately as the proceedings in O.s.13/06 is stayed by this court. Ext.P7 is challenged in W.P.(C).31289/06. Though notice was served on the respondent/defendant in both the cases, he did not appear.

2. Learned counsel appearing for petitioner was heard.

3. As O.S.13/06 is filed for fixation of boundary, proper identification of boundaries for fixation of the boundary is necessary to dispose the suit. I.A.285/06 was filed for appointment of a commission with the assistance of a surveyor. Learned Munsiff dismissed it under Ext.P6 order, holding that the petition is belated and without bonafides. An effective decree in that suit can not be granted without proper identification of the property and in such circumstances, on the ground of delay, learned Munsiff should have dismissed the application. Ext.P6 order is therefore quashed. Learned Munsiff is directed to appoint a commission to identify the property with the assistance of taluk surveyor at the expense of petitioner. When an order of say was granted in the suit, which is being jointly tried with another suit, learned Munsiff should not have split up the case and proceed with the other suit separately, under Ext.P7 order, especially when there was an earlier order for joint trial. In such circumstances, Ext.P7 order is quashed and learned Munsiff is directed to try both the suits jointly.

Petition disposed accordingly.

M.SASIDHARAN NAMBIAR,
JUDGE.

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